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NEWS REVIEW

Will the Baby Reindeer scandal kill 'true story' TV?

From The Crown to Mr Bates, we are hooked on dramas based on real events. Now that Netflix is facing a \$170m lawsuit over Martha the stalker, is the genre itself at risk?



Richard Gadd and Jessica Gunning in Baby Reindeer. Netflix is being sued for defamation by Fiona Harvey, who claims the character of Martha is based on her

ED MILLER/NETFLIX

Rosamund Urwin

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Across Los Angeles, hoardings have gone up promoting Netflix's *Baby Reindeer* for awards season. These posters target Emmy judges and are intended — alongside appearances on US chat shows by its stars, Richard Gadd and Jessica Gunning — to keep the monster hit fresh in their minds.

Since its release two months ago, *Baby Reindeer* has been the talk of the television industry, and not just because the stalking drama is so compelling. Instead, it has exposed the ethical and legal complexities of creating dramas based on true stories, with TV executives reacting with bafflement — and sometimes horror — to what they perceive as its disregard for the usual norms. Some are concerned that the fallout will make it harder in future to make dramas based on real events.

In its first episode, *Baby Reindeer*, which was also written by Gadd, a Scottish comedian, does away with the traditional disclaimer that “some names and events have been changed”, instead stating baldly: “This is a true story.” Sources in the TV industry have told The Sunday Times that this line was a request from Netflix, and that Gadd expressed concerns about presenting it as such (both Netflix and Gadd's representatives did not respond to requests for comment). There is also a little-noticed addendum at the end of the credits, with a disclaimer that parts of the series, which was made by London-based Clerkenwell Films, are fictionalised for dramatic purposes.

The off-screen drama is now overshadowing the show's success. This month Fiona Harvey, who claims that the show's stalker character Martha is based on her, accused Netflix of “the biggest lie in TV history”. [She is seeking \\$170 million](#) (£134 million) from the streaming giant for defamation, negligence and privacy violations. Her lawsuit was filed in California and claims that the drama falsely depicts her as having criminal convictions, including for stalking Gadd. (No one has found evidence that Harvey was ever convicted).



Fiona Harvey says she has been threatened by Baby Reindeer viewers who uncovered her identity

TALKTV

In response, Netflix is waging a two-pronged attack: legal and reputational. It stated this month: "We intend to defend this matter vigorously, and stand by Richard Gadd's right to tell his story." It has also released a video of Gadd talking about the beneficial social impact of the drama.

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'Even the most basic compliance would have stopped them'

Watching the first episode in its week of release, I tested how quickly the details about Martha in the show led to Harvey. It took me ten seconds to find her. Harvey's mini-biography on Twitter/X mirrored Martha's description of herself in the series.

The consensus among many in TV is that Gadd had a right to tell his story, that the drama was important and well-made, but

that the way it was done shows how rudimentary the compliance policy must be at Netflix. “Even the most basic compliance process would have stopped them putting ‘This is a true story’ at the start of the show,” says one TV executive. A second adds: “This failed every conceivable compliance test. [Harvey] should have been told that it was coming out, she should have had a right of reply — but most of all, they had a duty to disguise her identity better. This is another reminder that Netflix does not play by the same rules as the BBC, ITV and Sky.”

Netflix is not alone in running into these difficulties, though: a judge ruled last week in a preliminary hearing that the portrayal of a former university official in Steve Coogan’s 2022 film *The Lost King*, about the discovery of the remains of Richard III, is [defamatory](#). Richard Taylor, formerly of the University of Leicester, is suing Coogan, the production company Baby Cow and the distributors Pathe.



Sally Hawkins and Steve Coogan in *The Lost King*, a film about the discovery of Richard III's remains found beneath a Leicester car park in 2012

ALAMY

The question, then, is where this leaves dramas that are based on real events. A lot will rest on how Harvey’s claim plays out. Stuart Benjamin, a law professor at Duke University, says Harvey is more likely to win the defamation claims than her other claims but still faces a difficult battle, as defamation claims are harder to win in the US than in the UK — though the potential rewards are greater. “She has to prove the falsity of

the claims about her. In the UK, Netflix would have to prove the truth,” Benjamin told *The Media Show* on BBC Radio 4 last week.

It may never get to court, however — many of these cases are settled before that. This month, Netflix settled a defamation claim over the 2019 drama *When They See Us*, after a former New York City prosecutor, Linda Fairstein, [alleged she had been defamed](#). The streamer agreed to donate \$1 million to the Innocence Project and to make changes to the series.

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“I reckon Netflix will take a view that if it takes £10 million to settle, that’s fine,” another TV executive adds. “But the damage to the TV industry is much greater — it will hurt the ability to do real versions of controversies. A big settlement will encourage lawyers to sue in the future too. This won’t kill off [dramas based on real events], but it will make them immeasurably harder [to make]. And I bet the phrasing will change: it won’t be ‘inspired by real events’, it will be ‘inspired by real events but dramatised in a manner blah blah blah’.”

Hours and hours of due diligence

The streamers — including Netflix, Amazon Prime and Disney+ — are not regulated in the same way as traditional broadcasters. Although Ofcom sometimes receives complaints about their programmes (it did about the Netflix documentary *Harry & Meghan*, for example), handling them is outside the media regulator’s remit. The Dutch regulator, the Commissariaat voor de Media, regulates Netflix in Europe but says it is not able to take any action concerning *Baby Reindeer* as it does not have

powers to make judgments on privacy complaints.

This means the subjects of Netflix programmes lack the usual route to complain. However, the UK’s recently passed Media Act will extend Ofcom’s powers to cover the streaming giants, which is likely to mean tougher rules around privacy.

Ordinarily, TV production companies work closely with broadcasters’ editorial policy, compliance and legal teams. “We had hundreds of conversations and thousands of emails with them,” says a TV producer who recently made a series for the BBC. “I’m sure some people in TV find it irritating, but they’re there to protect you. People’s lives can be hugely affected by their portrayal, so we have a duty of care not to misrepresent them.”

There is some frustration too in TV that the *Baby Reindeer* controversy has cast dramas based on true stories in a bad light, when there was a sunny glow over the genre only three months earlier, thanks to the ITV series about the Horizon IT scandal, [Mr Bates vs The Post Office](#). Jo Hamilton, a former sub-postmistress who was wrongfully prosecuted and was played by Monica Dolan in the drama, is full of praise for the way it was made and for its writer, Gwyneth Hughes, in particular.

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“She spent hours and hours with us, and was up until the middle of the night writing — I’d get emails from her at 3am saying ‘and what would happen if that happened?’,” says Hamilton. “The drama is so true: 74 people really did turn up in

court to support me, including our vicar — just like on the telly.”

The show’s makers, Little Gem, involved the Post Office scandal victims in the process. “I went to the read-through,” adds Hamilton. “I got to know Monica, who followed me around and asked me to record my story from childhood, so she knew what I was like as a person, and I went on set to see it being made.”



Monica Dolan as Jo Hamilton in ITV’s *Mr Bates vs The Post Office*. The real Hamilton praised the way the programme-makers consulted her and other people involved

REX

No one in the industry wants to see the death of dramas based on real events, which can bring tragedies and injustices to life in a way that documentaries cannot, but there will now be a fierce spotlight on good practice.

Derek Wax, the managing director of Wild Mercury Productions, recently made the Bafta-winning true-crime drama *The Sixth Commandment*, about the deaths of the retired teachers Peter Farquhar and Ann Moore-Martin. “We worked with the bereaved families from the beginning,” he says. “If we hadn’t had the confidence and support of the families, we wouldn’t have proceeded.”

James Graham, whose critically acclaimed dramas include *Sherwood* and *Brexit: The Uncivil War*, says that each story has its “own unique responsibilities” but those are greater when they involve people who aren’t public figures and when they

involve trauma.

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Sherwood was inspired by real-life murders in 2004 in Nottinghamshire, where Graham grew up. “Years before it was on television, I was sitting in people’s living rooms and looking them in the whites of the eyes, going: ‘What do you think? What are your concerns?’ ” he recalls.

“It can be hard but it should be hard — this is their pain. I should have that three-in-the-morning anxiety about upsetting people.”

Graham takes a different approach with public figures such as Dominic Cummings, the focus of his Brexit drama. Graham approached him only once a script was written. “That was a public story and I felt like I have a right as a political playwright to address that, because it’s affected me and the country,” he says. “[With public figures] I am not inviting them to be creatively involved, but I would go and see him [Cummings] and ask questions and feed in those answers.”

The Crown, another Netflix show, famously came under fire for its blending of fact and fiction, particularly with the use of Princess Diana’s ghost in the final series.



The Crown's portrayal of Princess Diana by Elizabeth Debicki is the last in a long line of controversies about its truth to history

NETFLIX/LEFTBANK

Graham is relaxed about this artistic licence. “Sometimes an audience knows! When you’re watching *The Crown*, we know Peter Morgan wasn’t in that room with the Queen and Margaret Thatcher,” he says. “[But] I do think you have to be as transparent as possible and find a language — not just in those cards, but in the press when you’re doing interviews — to explain it.”

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In the case of *Baby Reindeer*, Netflix has raised the stakes. Benjamin King, its senior director of public policy for UK and Ireland, told a select committee in May that the show was “obviously a true story of the horrific abuse that ... Gadd suffered at the hands of a convicted stalker”.

Knowingly misleading a committee would be contempt of parliament. So far, though, all of this controversy has only seemed to boost Netflix: as of last week, the series is now one of

the streamer's top ten shows of all time.

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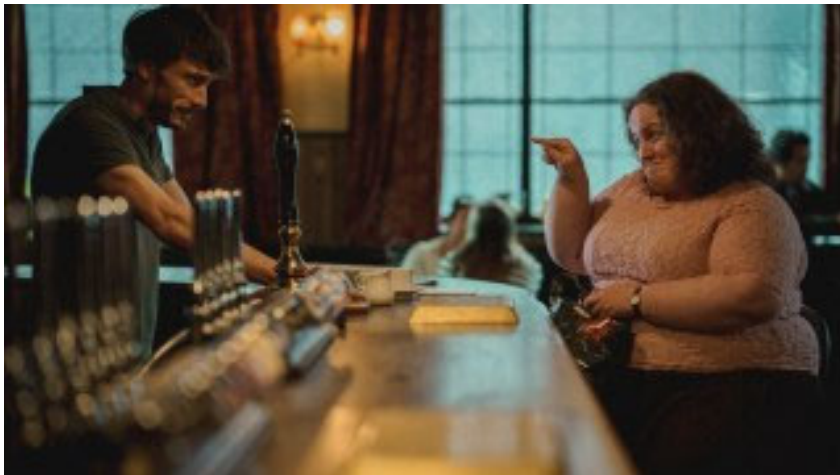
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May 12 2024, 12.01am BST

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